one year's imprisonment. The sentence is increased to 18 months. The sentence will run from today.

Appeal dismissed.

Sentence enhanced.

Solicitors: *Kam Woon Wah & Co.*

KOK KEE KWONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Raja Azlan Shah J.) December 20, 1971]

[Kuala Lumpur — Criminal Appeal No. 236 of 1971]

Evidence — Secondary evidence of document — Original wrongfully removed and fraudulently kept away — Notice to produce unnecessary — Evidence Ordinance 1950, ss. 65 and 66 proviso (c).

Criminal Law and Procedure — Sentence — First offender — Sentence reduced.

In this case the appellant had been convicted on a charge of criminal misappropriation. On appeal it was argued that the learned president erred in law by admitting carbon copies of store requisition notes contrary to sections 65 and 66 of the Evidence Ordinance. The learned president found as a fact that the appellant had fraudulently kept away originals of the requisition notes.

Held, dismissing the appeal against conviction: (1) the case came within the proviso (c) to section 66 of the Evidence Ordinance, and the carbon copies were admissible without notice to produce;

(2) sentence: in view of the fact that the appellant was a first offender, the sentence of eighteen months imprisonment would be set aside and one day's imprisonment and a fine of $2,000 substituted.

MAGISTRATE'S CRIMINAL APPEAL.

Lee Beng Cheang for the appellant.

Gunn Chit Tuan (Deputy Public Prosecutor) for the respondent.

Raja Azlan Shah J.: The appellant was convicted of misappropriating 120 bottles of Hennessy V.S.O.P. brandy and 24 bottles of Dewar's whisky valued at $2,928.00 between 19th January 1968 and 29th April 1968 and was sentenced to 18 months imprisonment under section 408 of the Penal Code. The prosecution case was based on the discrepancies between the store issue books (Exhibits P3A and P3B) and the store requisition notes both of which dealt with movement of liquor from the main store to the restaurant bar. Four requisition notes *i.e.*, Exhibits P5 to P8 are in issue:

(i) Entry on page 153 of Exhibit P3A dated 19th January 1968 *viz.*, Store Requisition Note No. 2702 showed 2 cases of Hennessy V.S.O.P. (1 case containing 12 bottles) were issued; Exhibit P5 dated 19th January 1968 (No. 2702) showed only 1 case was issued.

(ii) Entry on page 154 of Exhibit P3A dated 25th January 1968 *viz.*, Store Requisition Note No. 2712 showed 2 cases of Hennessy V.S.O.P.; Exhibit P6 dated 25th January 1968 (No. 2712) showed no item of Hennessy V.S.O.P.

(iii) Entry on page 30 of Exhibit P3B dated 26th April 1968 *viz.*, Store Requisition Note No. 2830 showed 3 cases of Hennessy V.S.O.P.; Exhibit P7 dated 26th April 1968 (No. 2830) showed no item of Hennessy V.S.O.P.

(iv) Entry on page 31 of Exhibit P3B dated 29th April 1968 *viz.*, Store Requisition Note No. 2835 showed 5 cases of Dewar's whisky and 4 cases of Hennessy V.S.O.P.; Exhibit P8 dated 29th April 1968 (No. 2835) showed only 3 cases of Dewar's whisky and no item of Hennessy V.S.O.P.

The appellant joined the staff of the Selangor Club in 1961. He left the club at the end of May 1968. Between 1963 and the end of May 1968 he was the store-keeper of the main store where liquor and beverages were stored. His duties regarding the issue of liquor to the restaurant bar were these: Whenever the bar captain wanted liquor for his bar he would write his requirements on a chit of paper, the store-keeper would then transfer the particulars in the store requisition note. On being satisfied that he had received his order the captain would then sign his name at the bottom of the requisition note *i.e.*, on the space provided above the words "Headboy". The requisition note consists of three copies. The first copy was kept by the store-keeper, the second copy was given to the bar captain and the third copy remained in the book. The store-keeper would then record the details in the store issue book. It must be noted that it was his duty to keep and maintain the store issue book and the store requisition notes.

Items (i) and (ii) above:—

Han Hah Juan — (PW7) the restaurant bar captain who had ordered liquor from the appellant for some 5 or 6 years in the manner described above identified his signature in Exhibit P5. He testified that he acknowledged receipt of the items mentioned in Exhibit P5 after checking them with the accused. In other words he received only one case of Hennessy V.S.O.P. brandy. He also identified his own signature in Exhibit P6. He said no Hennessy V.S.O.P. brandy was ordered or issued on that day. The witness also identified the writings in Exhibits P5 and P6 as those of the accused.

Items (iii) and (iv) above:—

Foo Ah Wee (PW8) — the bar captain identified his signature in Exhibits P7 and P8. He testified that he did not order or receive any Hennessy V.S.O.P. brandy on those two days mentioned in the requisition notes. He said accused wrote down the particulars in the two requisition notes and he identified accused's handwriting on them.

Lee Yew Thong (PW3) — the secretary of the club who had worked with the accused since 1961 is familiar with the accused's handwriting. He identified the writings in Exhibits P3A, P3B and P5 to P8 as those of the accused.

The learned president was satisfied that the requisition notes and the relevant entries in the store issue book were in the handwriting of the accused. On the question of credibility he had no reason to doubt the prosecution witnesses' testimony after seeing and hearing them.

The only ground of appeal with regard to conviction is that the learned president erred in law by admitting carbon copies of the store requisition notes contrary to sections 65 and 66 of the Evidence Ordinance which greatly prejudiced the appellant's case. In other words counsel on behalf of the appellant argued that the original copy *i.e.*, the first copies of the requisition notes should have been produced in evidence.

The general rule in regard to the production of documents is stated in Chapter V of our Evidence Ordinance, in particular sections 65 and 66 pertaining to the present appeal.

Section 65(a)(i) states that secondary evidence of the contents of a document may be given when the original is shown or appears to be in the possession or power of the accused and when after due notice as mentioned in section 66 the accused does not produce it. *Roscoe's* Criminal Evidence, 15th edition, page 11 states:

"When a document is in the hands of the adverse party, a notice to produce it in court must be given to him, before secondary evidence of its contents can be received. Its object is not, as formerly thought, to give the holder an opportunity of providing the proper testimony to explain or confirm the document but it is merely to enable him to produce it if he likes at the trial, and thus to secure the best evidence of its contents."

But notice is not necessary when it appears or is proved that the accused has obtained possession of the original by fraud or force (proviso (c) to section 66).

The learned president was satisfied on the evidence that the appellant had fraudulently kept away the originals of the requisition notes. I agree with the court's finding. It would therefore seem to me that under the exception carbon copies of the requisition notes are admissible without notice to produce. If so, it was for the court below to draw such reasonable inferences therefrom as it thought fit. It must be accepted that the onus of proof throughout lies upon the prosecution but the evidence as it stands uncontradicted is such that it at least calls for an explanation. There is in my opinion overwhelming evidence as to the accuracy of the requisition notes. There is identification of the appellant as the person with whom those dealings took place, and the learned president was therefore, entitled to accept the accuracy of those documents. Again those documents were verified by the two bar captains who had knowledge of the identity of the appellant and a general knowledge of the dealings. The question to my mind turns on weight rather than on admissibility, and it is for the court below, after admission, to decide what valid inferences can be drawn from those documents. The inferences to be drawn may depend on the explanation or lack of explanation given by the appellant. Here there was lack of explanation.

The appeal against conviction is dismissed.

Sentence:

On behalf of the appellant it was said that the appellant's present employers are willing to retain him in his present employment in spite of the conviction recorded against him. It was also pointed out that in the circumstances of the case the sentence is excessive for a first offence. I have seriously considered all the surrounding circumstances. I think the sentence of 18 months imprisonment is far too excessive. I would set aside the sentence and substitute one day's imprisonment plus a fine of $2,000 in default six months' imprisonment and a compensation of $2,928.00 is to be paid into court for the Selangor Club.

Appeal dismissed; Sentence Varied.

Solicitors: *Lee Beng Cheang.*

HONG BEE REALTY LTD. v. COLLECTOR OF LAND REVENUE, KUALA LUMPUR

[O.C.J. (Abdul Hamid J.) December 29, 1971]

[Kuala Lumpur — Civil Application No. 9 of 1964]

Land Laws — Compulsory acquisition — Compensation — Objection against award — Criteria used to determine true market value of property — Land Acquisition Act, 1960, ss. 38, 40, 51(1)(b).

This was an objection against the award of the Collector of Land Revenue, referred to the court under section 38 of the Land Acquisition Act, 1960, in respect of the compulsory acquisition by the Government of the State of Selangor, of approximately 9.222 acres of land owned by the applicants.

The land acquired is situated outside the Kuala Lumpur Municipal boundary. A declaration in accordance with section 8 of the Act was published in the Government of Selangor *Gazette* No. 9, on January 3, 1963. The land was acquired on August 3, 1963.

On March 12, 1963, the collector held an inquiry and made an award of $3,000 per acre in respect of the land acquired. The applicants claimed a compensation of $185,226 based on $20,089 59 per acre, or 46 cents per square foot as at January 31, 1963. On September 23, 1963, a notice of award and offer of compensation was served on the applicants. On October 15, 1963, the offer of compensation was accepted under protest.

Held: (1) the date for determination of the "market price" was January 3, 1963 and not August 3, 1963, when the land was acquired;

(2) in this case, it was not practical to use the "development" method. The applicants/owners not only assumed the price that they could fetch for residential and commercial lots, but they also assumed that they would readily secure sale of completed lots. The assumption was also as regards the availability of water and electricity supply. Thus, the applicants could not seriously argue that there was an immediate development potentiality in 1963. The land is still undeveloped;

(3) therefore, in the circumstances of the present case, the "comparable" method was the fairest method of determining the market value. Thus, having regard to all the material evidence produced, $5,000 per acre was a fair market value in respect of the land acquired as at January 3, 1963;

(4) the amount the court awarded exceeded the sum awarded by the collector, but since the claim of the applicants/owners was so excessive, they were, by virtue of section 51(1)(b) of the Land Acquisition Act, to pay their own costs and half of the costs of the collector;

(5) interest on difference of sum awarded by the collector and the court was to be paid to the applicants with effect from the date of possession at the rate of 6 *per cent per annum.*